IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 9536 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE J.R.VORA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

BHARAT VASTIMAL MARWADI (RATHOD)

Versus

COMMISSIONER OF POLICE

Appearance:

MR YOGESH S LAKHANI for Petitioner

Mr.P.S.Shukla AGP for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE J.R.VORA

Date of decision: 21/12/2000

ORAL JUDGEMENT

#. The petitioner, by way of this petition under Article 226 of the Constitution of India has challenged his order of detention passed by the Police Commissioner, Ahmedabad City, Ahmedabad on 16.8.2000 in exercise of the powers

conferred upon him vide section 3(1) of the Gujarat Prevention of Anti social Activities Act 1985 (PASA Act for short). The petitioner came to be detained from 16.8.2000 in pursuance of the above said order.

#. The detaining authority considered the facts of 2 crimes came to be registered against the petitioner on 14.12.1998 and 6.7.2000 before the Ellisbridge Police Station and Meghaninagar Police Station of Ahmedabad City under sections 307, 324,143 etc. of IPC. The detaining authority placed reliance upon the investigation in the above said offence and the complaint filed. The detaining authority also placed reliance upon the statements of 2 witnesses who on assurance of anonymity offered statements against the petitioner to the extent that the petitioner was a hardened criminal and hence the above order. The concerned witnesses were beaten by the petitioner on small issues. Due to the above activities of the petitioner, public order was disrupted . From the above materials, the detaining authority came to the conclusion that the petitioner was a head strong person and a hardened criminal. The detaining authority also declared that the petitioner was a dangerous person within the meaning of section 2(c) of the PASA Act.

#. Learned advocate Mr. P.S.Gondalia for Mr.Y.S.Lakhani for the petitioner and Learned AGP Mr. P.S.Shukla for the respondents were heard.

#. Various grounds were advanced against the order passed by the detaining authority. It was vehemently urged that the order of detention is vitiated by total non application of mind by the detaining authority qua relevant aspect of the case, It was urged that in one of the crimes registered against the petitioner, he was already on bail when the order came to be passed. In other crimes the petitioner obtained anticipatory bail and was on remand when the order came to be passed. It was urged that the detaining authority failed to consider the relevant aspect that less drastic remedy of cancellation of bail under section 437(5) of Cr.P.C. was available to the detaining authority and without resorting to the said remedy, the order of detention came to be passed by the detaining authority.

#. Having regard to the rival contention it clearly appears that the case of the petitioner is squarely covered by the ratio of 2 bench decisions of this Court in Zubedabibi Rasidkhan Pathan vs. State of Gujarat reported in 1995(2) GLR 1134 and in the matter of L.P.A. No.1056 of 1999 decided on 15.9.1999 Yunusbhai Hasanbhai

Ghanchi vs. District Magistrate. This court in both the above decisions observed that section 437(5) of the Cr.P.C. was far more wide in intent and import. The orders in both the above said cases came to be quashed on the sole ground that the detaining authority did not consider properly that less drastic remedy of cancellation of bail under section 437(5) Cr.P.C. which was easily available to the concerned authority. In the present case, in one of of the offences registered against the petitioner on 14.12.1994 the petitioner was on bail . In the other crime, though he had obtained anti-cipatory bail he was taken in remand at the time of passing of the order. Instead of considering the proper aspect of cancellation of bail under section 437(5) Cr.P.C. a less drastic remedy, which could have been resorted to, the detaining authority simply brushed aside the said remedy by merely saying that the procedure for cancellation of bail under section 437(5) Cr.P.C. was likely to consume more time and since the illegal activities of the petitioner was required to be prevented forthwith, the detaining authority did not consider fit to resort to remedy of cancellation of bail. Total non application of mind on the part of the detaining authority clearly emerges from this aspect of the case. Instead of resorting to the remedy available, the detaining authority simply did not take the same into consideration because it was likely to consume more time. For the above said reasons, the order of detention passed against the petitioner is required to the quashed and set aside.

#. In view of the above discussion, the order passed by the Police Commissioner, Ahmedabad City, Ahmedabad on 16.8.2000 against the petitioner under the PASA Act is hereby quashed and set aside. The petitioner-Bharat Vastimal Marwadi(Rathod) is hereby ordered to be set at liberty forthwith if he is not required to be detained for any other purposes. Rule made absolute.

(J.R.Vora.J)

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